HOUSE BILL No. 1354

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-5-41; IC 6-3.1-31.

Synopsis: Film and audio production tax incentives. Provides that transactions involving tangible personal property are exempt from sales tax if the person acquiring the property acquires it for the person's direct use in the direct production of a motion picture or an audio production. Provides a state tax credit for certain expenditures made in Indiana for a motion picture or an audio production. Excludes obscene motion pictures from the definition of motion picture for purposes of the sales tax exemption and the tax credit.

Effective: January 1, 2007.

Lutz J

January 12, 2006, read first time and referred to Committee on Ways and Means.

Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1354

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.5-5-41 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 41. (a) As used in this section, "motion picture or audio production" has the meaning set forth in IC 6-3.1-31-2.**

(b) As used in this section, "new business activity" has the meaning set forth in IC 6-3.1-31-4.

(c) Except as provided in subsection (d), transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for the person's direct use in the:

(1) direct production; or

(2) direct postproduction;

of a motion picture or audio production in Indiana.

(d) A person who acquires tangible personal property for the person's direct use in the direct production or direct postproduction of an advertising commercial in Indiana is not

entitled to an exemption under this section unless:

(1) the person is engaged in new business activity; or

(2) the Indiana economic development corporation grants an exemption to the person based on a finding that the direct production or direct postproduction of the advertising commercial will occur in another state if an exemption is not granted under this section.

(e) For purposes of this section, the following are not considered to be directly used in the direct production or direct postproduction of a motion picture or audio production:

(1) Food services.

(2) A vehicle used to transport actors and crew.

(3) Gasoline used in a vehicle used to transport actors and crew.

(4) Lodging.

SECTION 2. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]:

Chapter 31. Motion Picture and Audio Production Credit

Sec. 1. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 2. (a) As used in this chapter, "motion picture or audio production" means:

(1) a feature length film;

(2) a video;

(3) a television pilot or series;

(4) an advertising commercial;

(5) a music video or an audio recording; or

(6) a corporate production;

produced for any combination of theatrical, television, or other media viewing.

(b) The term includes preproduction, production, and postproduction work.

(c) The term does not include:

(1) material that is obscene (as described in IC 35-49-2-1); or

(2) television coverage of news or athletic events.

Sec. 3. As used in this chapter, "motion picture or audio production company" means an entity engaged in the business of producing motion pictures or audio productions.

Sec. 4. (a) As used in this chapter, "new business activity" means either of the following:

(1) The initial advertising commercial production for a newly developed or created product, service, or advertiser.

(2) Advertising commercial production for a product, service, or advertiser that is produced in Indiana at least two (2) years since the previous date on which advertising commercial production for the product, service, or advertiser occurred in Indiana.

(b) The term does not include the production of advertising for a product, service, or advertiser that is switched from an Indiana motion picture or audio production company to another Indiana motion picture or audio production company.

Sec. 5. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 6. As used in this chapter, "qualified expenses" means the amount of a motion picture or audio production company's expenditures made in Indiana for a motion picture or audio production.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 27-1-18-2 (the insurance premiums tax); and

(3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 8. (a) Except as provided in section 13 of this chapter, a motion picture or audio production company that incurs qualified expenses in a calendar year is entitled to a credit under this chapter if the qualified expenses:

(1) meet the requirements of subsections (c) and (d);

(2) meet any applicable requirement set forth in subsection (f), (g), or (h); and

(3) are certified as qualified expenses by the corporation under section 12 of this chapter.

(b) The amount of a credit allowed under this section is determined under section 9 of this chapter.

(c) Except as provided in subsection (e), a motion picture or

audio production company's qualified expenses must include:

(1) wages and salaries paid to Indiana residents; and

(2) purchases from Indiana vendors;

that when combined exceed the minimum amounts specified in subsection (d) as a condition of receiving a credit under this chapter.

(d) Except as provided in subsection (e), the sum of the qualified expenses described in subsection (c) must exceed the percentage of the motion picture or audio production company's total expenditures set forth in the following table:

CALENDAR YEAR	PERCENTAGE
2007	30%
2008	30%
2009	40%
2010	50%
2011 and thereafter	60%

(e) If the corporation finds that the sum of the qualified expenses described in subsection (c) of a motion picture or audio production company does not exceed the minimum percentage as specified in subsection (d) in spite of the good faith efforts of the motion picture or audio production company to comply with subsection (d), the corporation may allow a credit under this chapter in a reduced amount. The percentage used to calculate the motion picture or audio production company's credit under section 9 of this chapter must be reduced by a full percentage point for each full percentage point by which the sum of the qualified expenses described in subsection (c) of the motion picture or audio production company fell below the minimum percentage prescribed by subsection (d).

(f) If a motion picture or audio production company's qualified expenses are incurred in the production of a feature film, the total amount of the qualified expenses must exceed three hundred thousand dollars ($300,000) to qualify for a tax credit under this chapter.

(g) If a motion picture or audio production company's qualified expenses are incurred in the production of a television series, the total amount of the qualified expenses must exceed one hundred thousand dollars ($100,000) to qualify for a tax credit under this chapter.

(h) If a motion picture or audio production company's qualified expenses are incurred in the production of an advertising commercial, the motion picture or audio production company must

be engaged in new business activity to qualify for a tax credit under this chapter.

Sec. 9. (a) Except as provided in section 8(e) of this chapter, the total amount of a tax credit that may be claimed under this chapter in a particular calendar year equals:

(1) the total amount of qualified expenses incurred by the taxpayer in the calendar year; multiplied by

(2) twenty-five percent (25%).

(b) The credit provided by this chapter may be carried forward and applied to the taxpayer's state tax liability for nine (9) years following the unused credit year.

(c) A taxpayer is not entitled to any carryback or refund of any unused credit.

Sec. 10. (a) Except as provided in subsection (b), a motion picture or audio production company may not assign any part of a credit to which the motion picture or audio production company is entitled under this chapter.

(b) A motion picture or audio production company that incurs qualified expenses in the production of an advertising commercial may assign a tax credit allowed under this chapter to either of the following:

(1) The advertiser for whom the advertising commercial was produced.

(2) The advertising agency employed by the advertiser for whom the advertising commercial was produced.

Sec. 11. If a motion picture or audio production company is a pass through entity that does not have state tax liability against which the tax credit allowed under this chapter may be applied, a shareholder or partner of the motion picture or audio production company is entitled to a tax credit equal to:

(1) the tax credit determined for the motion picture or audio production company for the calendar year; multiplied by

(2) the percentage of the motion picture or audio production company's distributive income to which the shareholder or partner is entitled.

Sec. 12. The corporation shall certify that a motion picture or audio production company's expenditures are eligible for a tax credit under this chapter if the corporation determines that the expenditures were:

(1) made in Indiana; and

(2) directly related to the production of a motion picture or an audio production.

Sec. 13. (a) The corporation may waive any requirement of section 8 of this chapter for a motion picture or audio production company that proposes to incur qualified expenses for the production of an advertising commercial upon finding the following:

(1) Evidence that there is at least one (1) other competing production company outside Indiana that is being considered for the proposed advertising commercial production.

(2) A disparity, using the best available data, in the projected costs for the company's production in Indiana compared with the costs for the competing production company's proposed production in the competing site.

(3) That the Indiana motion picture or audio production company will lose the proposed advertising commercial production to the competing production company unless the Indiana motion picture or audio production company is awarded a tax credit under this chapter.

(b) A waiver awarded under this section must be approved and signed by the president of the corporation and attached to the certificate of verification submitted with the taxpayer's annual state tax return or returns submitted under section 14 of this chapter.

Sec. 14. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a credit under this chapter shall attach a copy of the corporation's certificate of verification to the income tax return that is filed for the calendar year for which the credit is claimed.

SECTION 3. [EFFECTIVE JANUARY 1, 2007] **(a) IC 6-2.5-5-41, as added by this act, applies to transactions occurring after December 31, 2006.**

(b) IC 6-3.1-31, as added by this act, applies to calendar years beginning after December 31, 2006.